

# 1999 DRAFTING REQUEST

## Bill

Received: 09/01/1999

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Assembly Republican Caucus 6-1452

By/Representing: Matt Sande

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters: kenneda  
grantpr

Subject: Education - miscellaneous  
Children - miscellaneous  
Health - AIDS  
Health - miscellaneous  
Mental Health - miscellaneous

Extra Copies:

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## Pre Topic:

No specific pre topic given

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## Topic:

Parental access to child's records

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## Instructions:

Provide for parental access, on request, to all records relating to the parent's child, e.g., pupil records under s. 118.125 and 118.126, law enforcement records and juvenile court records under ss. 48.396 and 938.396, social services records under ss. 48.78 and 938.78, mental health records under s. 51.30 and medical records under ss. 146.82, 146.83 and 252.15

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## Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm	chanaman					S&L
	09/03/1999	09/10/1999					
	nelsorp1						
	09/09/1999						
	kenneda						

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/3			jfrantze 09/16/1999		lrb_docadmin 09/16/1999	lrb_docadmin 09/16/1999 lrb_docadmin 09/16/1999	S&L
/4	malaigm 09/16/1999 grantpr 09/16/1999	chanaman 09/16/1999	kfollet 09/16/1999		lrb_docadmin 09/16/1999	lrb_docadmin 09/17/1999	

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	09/03/1999	09/10/1999					
	nelsorp1						
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	kenneda						

PA's - send out for  
new FE if bill  
goes to 11/31/99 14  
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*Handwritten notes:*  
 CMH 9/16  
 Kjf 9/16  
 12

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Page 2

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Page 1

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May Contact:

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grantpr**

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**Mental Health - miscellaneous**

Extra Copies:

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/?	malaigm	chanaman					S&L
	09/03/1999	09/10/1999					
	nelsorp1						
	09/09/1999						
	kenneda						

For Hundertmark  
 Per ARC's request  
 8-14-99

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Health - miscellaneous  
Mental Health - miscellaneous**

Extra Copies:

*Email to Matt  
when comes out*

**Pre Topic:**

No specific pre topic given

**Topic:**

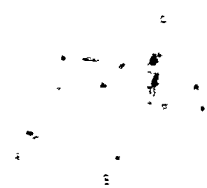
Parental access to child's records

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Page 2

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09/10/1999

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Matt  
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for "/1"

09-13-99

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grantpr

Subject: Education - miscellaneous  
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 Mental Health - miscellaneous

Extra Copies: *RPV***Pre Topic:**

No specific pre topic given

**Topic:**

Parental access to child's records

**Instructions:***51,47*

Provide for parental access, on request, to all records relating to the parent's child, e.g., pupil records under s. 118.125 and 118.126, law enforcement records and juvenile court records under ss. 48.396 and 938.396, social services records under ss. 48.78 and 938.78, mental health records under s. 51.30 and medical records under ss. 146.82, 146.83 and 252.15

*Also, attorney-client privilege 4-19-93***Drafting History:**

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1?	malaigm	<i>cmH</i> <i>9/10</i>	<i>lm</i> <i>9/10</i>	<i>ch</i> <i>9/10</i>			
FE Sent For:		<i>1</i>					

By tomorrow morning?

9/7/99

Matt

Parental Locs

Take out Legal

Police

Want Dup. / Records PG

, Social

GMM

Inv. CX

GMM

Mental

DAK

Medical

DAK



STEPHEN R. MILLER  
CHIEF

# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
P. O. BOX 2037  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-8522

REFERENCE SECTION: (608) 266-0341  
REFERENCE FAX: (608) 266-5648

for DATE select Create -> Date

## MEMORANDUM

To: Robert P. Nelson, Peter R. Grant & Debora A. Kennedy

From: Gordon M. Malaise

Subject: Parental access to a child's records

The attached draft, LRB-3553/1, requires your attention. Basically, the requester wants parents to have access to their children's records upon request.

Robert: See my handwritten rough draft of a possible amendment to s. 905.03 relating to attorney-client privilege when the client is a child. When done, pass the draft on to PG. out

Peter: You are already familiar with what the requester wants from the separate draft that I referred to you the other day. Just insert the same language into this draft. Also, Robert raised an interesting question: what about higher education records, e.g., college kids binge drinking? When done, pass the draft on to DAK. No-  
maybe  
another  
bill

Debora: Health and mental health records relating to a child already are pretty much fully accessible to parents. Nevertheless, the requester wants total access. Accordingly, ss. 51.30 (5) (b) and 252.15 (5) (a) 15. need to be amended to provide for access to the records of a child 14 years of age or over. Sections 51.47 (3) and 146.83 are probably ok, but you should take a look. When done, forward the draft to editing.

Also, if you are aware of any other statutes that restrict parental access to a child's records, please pass the draft on to the appropriate attorney or return the draft to me, and I will do so. out

Thank you for your assistance with this draft.





State of Wisconsin  
1999 - 2000 LEGISLATURE

SOON

FRIDAY, if possible  
TODAY

LRB-3553/?  
...GM/DK&PG:.....

cmv

AN ACT <sup>gen cat</sup> relating to: access by a parent to records relating to the parent's child.

***Analysis by the Legislative Reference Bureau***

Under current law, law enforcement officers' records of children are confidential and may not be opened to inspection or their contents disclosed except under certain exceptions. One of those exceptions *permits* a law enforcement agency, subject to official agency policy, to provide a copy of a law enforcement officer's report concerning a child to the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian. This bill *requires* a law enforcement agency to provide a copy of a law enforcement officer's report concerning a child to the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian.

Under current law, records of the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) are confidential and may not be opened to inspection or their contents disclosed exception under certain exceptions. One of those exceptions requires the juvenile court to open its records relating to a child for inspection by the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian, *unless* the juvenile court finds, after notice and a hearing, that inspection of those records by the parent, guardian or legal custodian would result in imminent danger to anyone. This bill requires a juvenile court to open its records relating to a child for inspection by the parent, guardian or legal custodian of the child on request of the parent, guardian or legal custodian, *without exception*.

Under current law, a social services agency, for example the department of health and family services, the department of corrections or a county department of human services or social services, may not make available for inspection or disclose the contents of any record kept or information received about a child in its care or

legal custody, except under certain exceptions. One of those exceptions <sup>✓</sup>permits a social services agency to make available for inspection or to disclose the contents of a record concerning a child to the parent, guardian, or legal custodian of the child on the request of the parent, guardian or legal custodian, *unless* the social services agency determines that inspection of the record by the parent, guardian or legal custodian would result in imminent danger to anyone. This bill <sup>✓</sup>requires a social services agency to make available for inspection or to disclose the contents of a record concerning a child to the parent, guardian, or legal custodian of the child on the request of the parent, guardian or legal custodian, *without exception*.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 48.396 (1b) of the statutes is amended to read:

48.396 (1b) If requested by the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report, ~~or if requested by the child,~~ if 14 years of age or over, a law enforcement agency ~~may, subject to official agency policy,~~ <sup>✓</sup>shall provide to the parent, guardian, or legal custodian ~~or child~~ a copy of that report. If requested by a child who is the subject of a law enforcement <sup>✓</sup>officer's report and who is 14 years of age or over, a law enforcement agency may, subject to official agency policy, <sup>✓</sup>provide to the child a copy of that report. If requested by the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a law enforcement officer's report, ~~if requested by an expectant mother of an unborn child who is the subject of a law enforcement officer's report, if 14 years of age or over, or if requested by an unborn child through the unborn child's guardian ad litem,~~ a law enforcement agency ~~may, subject to official agency policy,~~ <sup>✓</sup>shall provide to the parent, guardian, or legal custodian, ~~expectant mother or unborn child by the unborn child's guardian ad litem~~ a copy of that report. If requested by an expectant mother of an unborn child who is the subject of a law enforcement officer's

report and who is 14 years of age or over or if requested by an unborn child through the unborn child's guardian ad litem, a law enforcement agency may, subject to official agency policy, provide to the expectant mother or unborn child by the unborn child's guardian ad litem a copy of that report.<sup>Y</sup>

**History:** 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292.

**SECTION 2.** 48.396 (2) (ag) of the statutes is amended to read:

48.396 (2) (ag) Upon request of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), ~~or upon request of the child, if 14 years of age or over,~~ the court shall open for inspection by the parent, guardian, ~~or legal custodian or child~~ the records of the court relating to that child. Upon request of a child who is the subject of a record of a court specified in par. (a) and who is 14 years of age or over, the court shall open for inspection by the child the records of the court relating to that child, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian ~~or child~~ would result in imminent danger to anyone.

**History:** 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292.

**SECTION 3.** 48.396 (2) (aj) of the statutes is amended to read:

48.396 (2) (aj) Upon request of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), ~~upon request of an expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), if 14 years of age or over, or upon request of an unborn child by the unborn child's guardian ad litem,~~ the court shall open for inspection by the parent, guardian, ~~or legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem~~ the records of the court relating to that expectant mother. Upon request of an expectant mother of an unborn child who is

*add scored period*

↳ the subject of a record of a court specified in par(a) and who is 14 years of age or over or upon request of an unborn child by the unborn child's guardian ad litem, the court shall open for inspection by the expectant mother or unborn child by the unborn child's guardian ad litem the records of the court relating to that expectant mother, unless the court finds, after due notice and hearing, that inspection of those records by the ~~parent, guardian, legal custodian,~~ expectant mother or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

**History:** 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292.

**SECTION 4. 48.78 (2) (ag) of the statutes is amended to read:**

48.78 (2) (ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian or legal custodian of the child who is the subject of the record or upon the request of the child, if 14 years of age or over, to the parent, guardian, legal custodian or child. Upon request of a parent, guardian or legal custodian of a child who is the subject of a record, an agency shall make available for inspection or disclose the contents of the record to the parent, guardian or legal custodian. Upon request of a child who is the subject of a record and who is 14 years of age or over, an agency may make available for inspection or disclose the contents of the record to the child, unless the agency determines that inspection of those records by the child, ~~parent, guardian or legal custodian~~ would result in imminent danger to anyone.

**History:** 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7; 1985 a. 29 s. 3202 (23); 1985 a. 176, 292, 332; 1987 a. 332; 1989 a. 31, 107, 336; 1991 a. 17, 39; 1993 a. 16, 92, 95, 218, 227, 377, 385, 395, 479, 491; 1995 a. 27 ss. 2610 to 2614p, 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283, 292.

**SECTION 5. 48.78 (2) (aj) of the statutes is amended to read:**

48.78 (2) (aj) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of a parent, guardian or legal custodian of a child expectant mother of an unborn child who is the

subject of the record, upon the request of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, or upon the request of an unborn child by the unborn child's guardian ad litem to the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem. Upon request of a parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record, an agency shall make available for inspection or disclose the contents of the record to the parent, guardian or legal custodian. Upon request of an expectant mother of an unborn child who is the subject of a record and who is 14 years of age or over or upon request of an unborn child by the unborn child's guardian ad litem, an agency may make available for inspection or disclose the contents of the record to the expectant mother or unborn child by the unborn child's guardian ad litem, unless the agency determines that inspection of those records by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7; 1985 a. 29 s. 3202 (23); 1985 a. 176, 292, 332; 1987 a. 332; 1989 a. 31, 107, 336; 1991 a. 17, 39; 1993 a. 16, 92, 95, 218, 227, 377, 385, 395, 479, 491; 1995 a. 27 ss. 2610 to 2614p, 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283, 292.

**SECTION 6.** 938.396 (1b) of the statutes is amended to read:

938.396 (1b) If requested by the parent, guardian or legal custodian of a juvenile who is the subject of a law enforcement officer's report, ~~or if requested by the juvenile, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, shall~~ provide to the parent, guardian, or legal custodian or juvenile a copy of that report. If requested by a juvenile who is the subject of a law enforcement officer's report and who is 14 years of age or over, a law enforcement agency may, subject to official agency policy, provide to the juvenile a copy of that report.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; s. 13.93 (1) (b), (2) (c).

**SECTION 7.** 938.396 (2) (ag) of the statutes is amended to read:

938.396 (2) (ag) Upon request of the parent, guardian or legal custodian of a juvenile who is the subject of a record of a court specified in par. (a), ~~or upon request of the juvenile, if 14 years of age or over,~~ the court shall open for inspection by the parent, guardian, <sup>✓</sup> or legal custodian ~~or juvenile~~ the records of the court relating to that juvenile. Upon request of a juvenile who is the subject of a record of a court specified in par. (a) and who is 14 years of age or over, the court shall open for inspection by the juvenile the records of the court relating to that juvenile, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, <sup>✓</sup> legal custodian ~~or juvenile~~ would result in imminent danger to anyone.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; s. 13.93 (1) (b), (2) (c).

**SECTION 8. 938.78 (2) (ag) of the statutes is amended to read:**

938.78 (2) (ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian or legal custodian of the juvenile who is the subject of the record or upon the request of the juvenile, if 14 years of age or over, to the parent, guardian, legal custodian or juvenile. Upon request of a parent, guardian or legal custodian of a juvenile who is the subject of a record, an agency shall make available for inspection or disclose the contents of the record to the parent, guardian or legal custodian. Upon request of a juvenile who is the subject of a record and who is 14 years of age or over, an agency may make available for inspection or disclose the contents of the record to the juvenile, unless the agency finds that inspection of those records by the juvenile, parent, guardian or legal custodian would result in imminent danger to anyone.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283.

(END)

INS.  
C

**1999 BILL**

1 **AN ACT to amend** 118.126 (1) (c) and 118.126 (2); and **to create** 118.126 (3) of the  
2 statutes; **relating to:** information received by a school official regarding a  
3 pupil's use of alcohol or other drugs.

---

***Analysis by the Legislative Reference Bureau***

A 9 Under current law, with certain exceptions, any school psychologist, counselor, social worker or nurse, and any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, must keep confidential information received from a pupil that the pupil or another pupil is using or experiencing problems resulting from the use of alcohol or other drugs.

This bill provides that any such information received about a pupil must be disclosed to the parent or guardian of that pupil upon the request of the parent or guardian.

(END OF INSERT A)

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4 **SECTION 1.** 118.126 (1) (c) of the statutes is amended to read:

5 118.126 (1) (c) The information is required to be reported under sub. (3) or s.  
6 48.981.

**BILL**

1           **SECTION 2.** 118.126 (2) of the statutes is amended to read:

2           118.126 (2) A school psychologist, counselor, social worker or nurse, or any  
3 teacher or administrator designated by the school board who engages in alcohol or  
4 drug abuse program activities, who in good faith discloses or fails to disclose  
5 information under sub. (1) is immune from civil liability for such acts or omissions.  
6 This subsection does not apply to information required to be reported under sub. (3)  
7 or s. 48.981.

8           **SECTION 3.** 118.126 (3) of the statutes is created to read:

9           118.126 (3) Any information received about a pupil under sub. (1) shall be  
10 disclosed to the parent or guardian of that pupil upon the request of the parent or  
11 guardian.

(END OF INSERT B, RETURN TO INSERT 5)

12           **SECTION 4. Initial applicability.**

13           (1) ~~This act~~ first applies to information received under section 118.126 (1) of the  
14 statutes on the effective date of this subsection.

15           (END)

C  
The treatment of section 118.126 (1) (c), (2) and (3)  
of the statutes



**1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3553/?ins  
...GM,DK&PG:.....

**INSERT AA**

(91) Currently, the parent, guardian or person in place of a parent of a developmentally disabled minor has access at all times to the minor's court or treatment records for mental illness, developmental disability, alcoholism or drug dependence unless the minor is 14 or older and files a written objection to the access. Parents, guardians and persons in the place of parents of other minors have the same rights of access to the court and treatment records of the minors as do the minors themselves. This bill requires access by a parent, guardian or person in the place of a parent of *any* minor to the minor's court or treatment records at all times.

Currently, contents of patient health care records may be released only with the informed consent of the patient or of a person authorized by the patient or, without informed consent, to specified persons. A "person authorized by a patient" includes the parent, guardian or legal custodian of a minor patient. Thus, a parent of a minor patient may provide informed consent for release of the minor's patient health care records to himself or herself. A patient or other person may inspect and receive a copy of a patient's health care record by submitting a statement of informed consent. This bill clarifies that the informed consent for inspection and receipt of a patient's health care record may be that of the patient or of a person authorized by the patient.

Currently, only the parent or guardian of a minor under age 14 may have access, without the informed consent of the minor, to the results of a test for the presence of HIV (human immunodeficiency virus, the virus that causes AIDS). This bill permits the parent, guardian or person in the place of the parent of any minor to have access, without informed consent, to any results of the minor's test for the presence of HIV.

**INSERT 5**

- 1           **SECTION 1.** 51.30 (5) (b) 1. of the statutes is amended to read:
- 2           51.30 (5) (b) 1. The guardian of an individual who is adjudged incompetent
- 3           under ch. 880 shall have access to the individual's court and treatment records at all
- 4           times. The parent, guardian or person in the place of a parent of a developmentally
- 5           disabled minor shall have access to the minor's court and treatment records at all
- 6           times ~~except in the case of a minor aged 14 or older who files a written objection to~~
- 7           ~~such access with the custodian of the records. The parent, guardian or person in the~~
- 8           ~~place of a parent of other minors shall have the same rights of access as provided to~~
- 9           ~~subject individuals under this section.~~

History: 1975 c. 430; 1977 c. 26 s. 75; 1977 c. 61, 428; 1979 c. 110 s. 60 (1); 1983 a. 27, 292, 398, 538; 1985 a. 29, 176; 1985 a. 292 s. 3; 1985 a. 332 ss 97, 98, 251 (1); 1987 a. 352, 355, 362, 367, 399, 403; 1989 a. 31, 334, 336; 1991 a. 39, 189; 1993 a. 196, 445, 479; 1995 a. 169, 440, 1997 a. 35, 231, 237, 283, 292; s. 13.93 (2) (c).

INSERT  
B

(END OF INSERT 5)

# SUBMITTAL FORM

LEGISLATIVE REFERENCE BUREAU  
Legal Section Telephone: 266-3561  
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 09/10/1999

To: Assembly Republican Caucus

Relating to LRB drafting number: LRB-3553

## Topic

Parental access to child's records

## Subject(s)

Education - miscellaneous, Children - miscellaneous, Health - AIDS, Health - miscellaneous, Mental Health - miscellaneous

1. **JACKET** the draft for introduction \_\_\_\_\_

in the Senate \_\_\_\_ or the Assembly \_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached \_\_\_\_\_

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction \_\_\_\_\_

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney  
Telephone: (608) 266-9738

LRB for  
Sent 09-13-99  
gmb

Matthew Jank, ARC 9/13/99



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-3553/1 (2)  
GM/DK/PG:cmh:km RMR

Today

1999 BILL

Regulate

1 AN ACT to amend 48.396 (1b), 48.396 (2) (ag), 48.396 (2) (aj), 48.78 (2) (ag), 48.78  
2 (2) (aj), 51.30 (5) (b) 1., 118.126 (1) (c), 118.126 (2), 146.83 (1) (intro.), 252.15 (5)  
3 (a) 15., 938.396 (1b), 938.396 (2) (ag) and 938.78 (2) (ag); and to create 118.126  
4 (3) of the statutes; relating to: access by a parent to records relating to the  
5 parent's child.

---

*Analysis by the Legislative Reference Bureau*

~~Under current law, law enforcement officers' records of children are confidential and may not be opened to inspection or their contents disclosed except under certain exceptions. One of those exceptions permits a law enforcement agency, subject to official agency policy, to provide a copy of a law enforcement officer's report concerning a child to the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian. This bill requires a law enforcement agency to provide a copy of a law enforcement officer's report concerning a child to the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian.~~

Under current law, records of the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) are confidential and may not be opened to inspection or their contents disclosed except under certain exceptions. One of those exceptions requires the juvenile court to open its records relating to a child for inspection by the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian, unless the juvenile

**BILL**

court finds, after notice and a hearing, that inspection of those records by the parent, guardian or legal custodian would result in imminent danger to anyone. This bill requires a juvenile court to open its records relating to a child for inspection by the parent, guardian or legal custodian of the child on request of the parent, guardian or legal custodian, *without exception*.

Under current law, a social services agency, for example the department of health and family services, the department of corrections or a county department of human services or social services, may not make available for inspection or disclose the contents of any record kept or information received about a child in its care or legal custody, except under certain exceptions. One of those exceptions *permits* a social services agency to make available for inspection or to disclose the contents of a record concerning a child to the parent, guardian, or legal custodian of the child on the request of the parent, guardian or legal custodian, *unless* the social services agency determines that inspection of the record by the parent, guardian or legal custodian would result in imminent danger to anyone. This bill *requires* a social services agency to make available for inspection or to disclose the contents of a record concerning a child to the parent, guardian, or legal custodian of the child on the request of the parent, guardian or legal custodian, *without exception*.

Under current law, with certain exceptions, any school psychologist, counselor, social worker or nurse, and any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, must keep confidential information received from a pupil that the pupil or another pupil is using or experiencing problems resulting from the use of alcohol or other drugs.

This bill provides that any such information received about a pupil must be disclosed to the parent or guardian of that pupil upon the request of the parent or guardian.

Currently, the parent, guardian or person in place of a parent of a developmentally disabled minor has access at all times to the minor's court or treatment records for mental illness, developmental disability, alcoholism or drug dependence unless the minor is 14 or older and files a written objection to the access. Parents, guardians and persons in the place of parents of other minors have the same rights of access to the court and treatment records of the minors as do the minors themselves. This bill requires access by a parent, guardian or person in the place of a parent of *any* minor to the minor's court or treatment records at all times.

Currently, contents of patient health care records may be released only with the informed consent of the patient or of a person authorized by the patient or, without informed consent, to specified persons. A "person authorized by a patient" includes the parent, guardian or legal custodian of a minor patient. Thus, a parent of a minor patient may provide informed consent for release of the minor's patient health care records to himself or herself. A patient or other person may inspect and receive a copy of a patient's health care record by submitting a statement of informed consent. This bill clarifies that the informed consent for inspection and receipt of a patient's health care record may be that of the patient or of a person authorized by the patient.

Currently, only the parent or guardian of a minor under age 14 may have access, without the informed consent of the minor, to the results of a test for the presence

**BILL**

of HIV (human immunodeficiency virus, the virus that causes AIDS). This bill permits the parent, guardian or person in the place of the parent of any minor to have access, without informed consent, to any results of the minor's test for the presence of HIV.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1        **SECTION 1.** 48.396 (1b) of the statutes is amended to read:

2        ~~48.396 (1b) If requested by the parent, guardian or legal custodian of a child~~  
3        ~~who is the subject of a law enforcement officer's report, or if requested by the child,~~  
4        ~~if 14 years of age or over, a law enforcement agency may, subject to official agency~~  
5        ~~policy, shall provide to the parent, guardian, or legal custodian or child a copy of that~~  
6        ~~report. If requested by a child who is the subject of a law enforcement officer's report~~  
7        ~~and who is 14 years of age or over, a law enforcement agency may, subject to official~~  
8        ~~agency policy, provide to the child a copy of that report. If requested by the parent,~~  
9        ~~guardian or legal custodian of a child expectant mother of an unborn child who is the~~  
10       ~~subject of a law enforcement officer's report, if requested by an expectant mother of~~  
11       ~~an unborn child who is the subject of a law enforcement officer's report, if 14 years~~  
12       ~~of age or over, or if requested by an unborn child through the unborn child's guardian~~  
13       ~~ad litem, a law enforcement agency may, subject to official agency policy, shall~~  
14       ~~provide to the parent, guardian, or legal custodian, expectant mother or unborn child~~  
15       ~~by the unborn child's guardian ad litem a copy of that report. If requested by an~~  
16       ~~expectant mother of an unborn child who is the subject of a law enforcement officer's~~  
17       ~~report and who is 14 years of age or over or if requested by an unborn child through~~  
18       ~~the unborn child's guardian ad litem, a law enforcement agency may, subject to~~

**BILL****SECTION 1**

1 ~~official agency policy, provide to the expectant mother or unborn child by the unborn~~  
2 ~~child's guardian ad litem a copy of that report.~~

3 **SECTION 2.** 48.396 (2) (ag) of the statutes is amended to read:

4 48.396 (2) (ag) Upon request of the parent, guardian or legal custodian of a  
5 child who is the subject of a record of a court specified in par. (a), ~~or upon request of~~  
6 ~~the child, if 14 years of age or over,~~ the court shall open for inspection by the parent,  
7 guardian, or legal custodian ~~or child~~ the records of the court relating to that child.  
8 Upon request of a child who is the subject of a record of a court specified in par. (a)  
9 and who is 14 years of age or over, the court shall open for inspection by the child the  
10 records of the court relating to that child, unless the court finds, after due notice and  
11 hearing, that inspection of those records by the parent, guardian, legal custodian ~~or~~  
12 child would result in imminent danger to anyone.

13 **SECTION 3.** 48.396 (2) (aj) of the statutes is amended to read:

14 48.396 (2) (aj) Upon request of the parent, guardian or legal custodian of a child  
15 expectant mother of an unborn child who is the subject of a record of a court specified  
16 in par. (a), ~~upon request of an expectant mother of an unborn child who is the subject~~  
17 ~~of a record of a court specified in par. (a), if 14 years of age or over, or upon request~~  
18 ~~of an unborn child by the unborn child's guardian ad litem,~~ the court shall open for  
19 inspection by the parent, guardian, or legal custodian, ~~expectant mother or unborn~~  
20 ~~child by the unborn child's guardian ad litem~~ the records of the court relating to that  
21 expectant mother. Upon request of an expectant mother of an unborn child who is  
22 the subject of a record of a court specified in par. (a) and who is 14 years of age or over  
23 or upon request of an unborn child by the unborn child's guardian ad litem, the court  
24 shall open for inspection by the expectant mother or unborn child by the unborn  
25 child's guardian ad litem the records of the court relating to that expectant mother,

**BILL**

1 unless the court finds, after due notice and hearing, that inspection of those records  
2 by the ~~parent, guardian, legal custodian~~, expectant mother or unborn child by the  
3 unborn child's guardian ad litem would result in imminent danger to anyone.

4 **SECTION 4.** 48.78 (2) (ag) of the statutes is amended to read:

5 48.78 (2) (ag) Paragraph (a) does not prohibit an agency from making available  
6 for inspection or disclosing the contents of a record, upon the request of the parent,  
7 guardian or legal custodian of the child who is the subject of the record or upon the  
8 request of the child, if 14 years of age or over, to the parent, guardian, legal custodian  
9 or child. Upon request of a parent, guardian or legal custodian of a child who is the  
10 subject of a record, an agency shall make available for inspection or disclose the  
11 contents of the record to the parent, guardian or legal custodian. Upon request of a  
12 child who is the subject of a record and who is 14 years of age or over, an agency may  
13 make available for inspection or disclose the contents of the record to the child, unless  
14 the agency determines that inspection of those records by the child, ~~parent, guardian~~  
15 ~~or legal custodian~~ would result in imminent danger to anyone.

16 **SECTION 5.** 48.78 (2) (aj) of the statutes is amended to read:

17 48.78 (2) (aj) Paragraph (a) does not prohibit an agency from making available  
18 for inspection or disclosing the contents of a record, upon the request of a parent,  
19 guardian or legal custodian of a child expectant mother of an unborn child who is the  
20 subject of the record, upon the request of an expectant mother of an unborn child who  
21 is the subject of the record, if 14 years of age or over, or upon the request of an unborn  
22 child by the unborn child's guardian ad litem to the parent, guardian, legal  
23 custodian, expectant mother or unborn child by the unborn child's guardian ad litem.  
24 Upon request of a parent, guardian or legal custodian of a child expectant mother of  
25 an unborn child who is the subject of a record, an agency shall make available for



**BILL****SECTION 5**

1 inspection or disclose the contents of the record to the parent, guardian or legal  
2 custodian. Upon request of an expectant mother of an unborn child who is the subject  
3 of a record and who is 14 years of age or over or upon request of an unborn child by  
4 the unborn child's guardian ad litem, an agency may make available for inspection  
5 or disclose the contents of the record to the expectant mother or unborn child by the  
6 unborn child's guardian ad litem, unless the agency determines that inspection of  
7 those records by the parent, guardian, legal custodian, expectant mother or unborn  
8 child by the unborn child's guardian ad litem would result in imminent danger to  
9 anyone.

10 **SECTION 6.** 51.30 (5) (b) 1. of the statutes is amended to read:

11 51.30 (5) (b) 1. The guardian of an individual who is adjudged incompetent  
12 under ch. 880 shall have access to the individual's court and treatment records at all  
13 times. The parent, guardian or person in the place of a parent of a developmentally  
14 disabled minor shall have access to the minor's court and treatment records at all  
15 times ~~except in the case of a minor aged 14 or older who files a written objection to~~  
16 ~~such access with the custodian of the records. The parent, guardian or person in the~~  
17 ~~place of a parent of other minors shall have the same rights of access as provided to~~  
18 ~~subject individuals under this section.~~

19 **SECTION 7.** 118.126 (1) (c) of the statutes is amended to read:

20 118.126 (1) (c) The information is required to be reported under sub. (3) or s.  
21 48.981.

22 **SECTION 8.** 118.126 (2) of the statutes is amended to read:

23 118.126 (2) A school psychologist, counselor, social worker or nurse, or any  
24 teacher or administrator designated by the school board who engages in alcohol or  
25 drug abuse program activities, who in good faith discloses or fails to disclose

**BILL**

1 information under sub. (1) is immune from civil liability for such acts or omissions.  
2 This subsection does not apply to information required to be reported under sub. (3)  
3 or s. 48.981.

4 **SECTION 9.** 118.126 (3) of the statutes is created to read:

5 118.126 (3) Any information received about a pupil under sub. (1) shall be  
6 disclosed to the parent or guardian of that pupil upon the request of the parent or  
7 guardian.

8 **SECTION 10.** 146.83 (1) (intro.) of the statutes is amended to read:

9 146.83 (1) (intro.) Except as provided in s. 51.30 or 146.82 (2), any patient or  
10 other person may, upon submitting a statement of informed consent of the patient  
11 or a person authorized by the patient:

12 **SECTION 11.** 252.15 (5) (a) 15. of the statutes is amended to read:

13 252.15 (5) (a) 15. To anyone who provides consent for the testing under sub. (2)  
14 (a) 4. b. and, for any other minor, to the parent, guardian or person in the place of a  
15 parent of the minor, except that disclosure may be made under this subdivision only  
16 during a period in which the test subject is adjudicated incompetent under ch. 880,  
17 is under 14 18 years of age or is unable to communicate due to a medical condition.

18 **SECTION 12.** 938.396 (1b) of the statutes is amended to read:

19 938.396 (1b) If requested by the parent, guardian or legal custodian of a  
20 juvenile who is the subject of a law enforcement officer's report, ~~or if requested by the~~  
21 ~~juvenile, if 14 years of age or over, a law enforcement agency may, subject to official~~  
22 ~~agency policy, shall provide to the parent, guardian, or legal custodian or juvenile a~~  
23 ~~copy of that report. If requested by a juvenile who is the subject of a law enforcement~~  
24 ~~officer's report and who is 14 years of age or over, a law enforcement agency may,~~  
25 ~~subject to official agency policy, provide to the juvenile a copy of that report.~~

**BILL****SECTION 13**

1       **SECTION 13.** 938.396 (2) (ag) of the statutes is amended to read:

2       938.396 (2) (ag) Upon request of the parent, guardian or legal custodian of a  
3 juvenile who is the subject of a record of a court specified in par. (a), ~~or upon request~~  
4 ~~of the juvenile, if 14 years of age or over,~~ the court shall open for inspection by the  
5 parent, guardian, or legal custodian ~~or juvenile~~ the records of the court relating to  
6 that juvenile. Upon request of a juvenile who is the subject of a record of a court  
7 specified in par. (a) and who is 14 years of age or over, the court shall open for  
8 inspection by the juvenile the records of the court relating to that juvenile, unless the  
9 court finds, after due notice and hearing, that inspection of those records by the  
10 ~~parent, guardian, legal custodian or juvenile~~ would result in imminent danger to  
11 anyone.

12       **SECTION 14.** 938.78 (2) (ag) of the statutes is amended to read:

13       938.78 (2) (ag) Paragraph (a) does not prohibit an agency from making  
14 available for inspection or disclosing the contents of a record, upon the request of the  
15 parent, guardian or legal custodian of the juvenile who is the subject of the record  
16 or upon the request of the juvenile, if 14 years of age or over, to the parent, guardian,  
17 legal custodian or juvenile. Upon request of a parent, guardian or legal custodian  
18 of a juvenile who is the subject of a record, an agency shall make available for  
19 inspection or disclose the contents of the record to the parent, guardian or legal  
20 custodian. Upon request of a juvenile who is the subject of a record and who is 14  
21 years of age or over, an agency may make available for inspection or disclose the  
22 contents of the record to the juvenile, unless the agency finds that inspection of those  
23 records by the juvenile, parent, guardian or legal custodian would result in imminent  
24 danger to anyone.

25       **SECTION 15. Initial applicability.**

# BILL

1           (1) The treatment of section 118.126 (1) (c), (2) and (3) of the statutes first  
2       applies to information received under section 118.26 (1) of the statutes on the  
3       effective date of this subsection.

4 (END)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU - LEGAL SECTION  
(608-266-3561)

1 Matt Sande  
parent's access  
3553/2

delete juv. ct. + social services  
records

In - school  
mental  
medical

By 9/16 NOON

## FISCAL ESTIMATE FORM

1999 Session

☒ ORIGINAL  
☐ CORRECTED☐ UPDATED  
☐ SUPPLEMENTAL

LRB # LRB 3553 / 2

Introduction #

Admin. Rule #

Subject Access by a parent to records relating to the parent's child

## Fiscal Effect Indeterminable

State: ☐ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation.☐ Increase Existing Appropriation  
☐ Decrease Existing Appropriation  
☐ Create New Appropriation☐ Increase Existing Revenues  
☐ Decrease Existing Revenues☐ Increase Costs - May be possible to Absorb  
Within Agency's Budget ☐ Yes ☐ No☐ Decrease CostsLocal: ☐ No local government costs Indeterminable1. ☐ Increase Costs  
☐ Permissive ☐  
Mandatory2. ☐ Decrease Costs  
☐ Permissive ☐  
Mandatory3. ☐ Increase Revenues  
☐ Permissive ☐ Mandatory4. ☐ Decrease Revenues  
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities☐ Counties ☐ Others \_\_\_\_\_☒ School Districts ☐ WTCS Districts

## Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐

SEG-S

## Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

This bill requires certain entities to release specified information to parents upon request. Among those entities are school district personnel designated by the school board who engage in alcohol or drug abuse program activities. The bill provides that any information received from a pupil that the pupil or another pupil is using or experiencing problems resulting from the use of alcohol or other drugs must be disclosed to the parent or legal guardian of that pupil upon request of the parent or legal guardian.

Because it is unknown how many parents or guardians will request the above information, any costs related to this provision in the bill to local school districts are indeterminable.


There is no state fiscal effect as a result of this bill.

## Long-Range Fiscal Implications:

Prepared By: (Name &amp; Phone # / Agency Name)

Tom Johnson (608) 266-2819  
Department of Public Instruction

Authorized Signature / Telephone No.

  
Gina Frank-Reece (608) 266-2804

Date

9-17-99

H. 9116 MOON

## 1999 BILL

Regenerate

1 AN ACT *to amend* 48.396 (2) (ag), 48.396 (2) (aj), 48.78 (2) (ag), 48.78 (2) (aj), 51.30  
 2 (5) (b) 1., 118.126 (1) (c), 118.126 (2), 146.83 (1) (intro.), 252.15 (5) (a) 15.,  
 3 938.396 (2) (ag) and 938.78 (2) (ag); and *to create* 118.126 (3) of the statutes;  
 4 **relating to:** access by a parent to records relating to the parent's child.

***Analysis by the Legislative Reference Bureau***

~~Under current law, records of the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) are confidential and may not be opened to inspection or their contents disclosed except under certain exceptions. One of those exceptions requires the juvenile court to open its records relating to a child for inspection by the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian, *unless* the juvenile court finds, after notice and a hearing, that inspection of those records by the parent, guardian or legal custodian would result in imminent danger to anyone. This bill requires a juvenile court to open its records relating to a child for inspection by the parent, guardian or legal custodian of the child on request of the parent, guardian or legal custodian, *without exception*.~~

Under current law, a social services agency, for example the department of health and family services, the department of corrections or a county department of human services or social services, may not make available for inspection or disclose the contents of any record kept or information received about a child in its care or legal custody, except under certain exceptions. One of those exceptions *permits* a social services agency to make available for inspection or to disclose the contents of

**BILL**

~~a record concerning a child to the parent, guardian, or legal custodian of the child on the request of the parent, guardian or legal custodian, unless the social services agency determines that inspection of the record by the parent, guardian or legal custodian would result in imminent danger to anyone. This bill requires a social services agency to make available for inspection or to disclose the contents of a record concerning a child to the parent, guardian, or legal custodian of the child on the request of the parent, guardian or legal custodian, without exception.~~

Under current law, with certain exceptions, any school psychologist, counselor, social worker or nurse, and any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, must keep confidential information received from a pupil that the pupil or another pupil is using or experiencing problems resulting from the use of alcohol or other drugs. ✓

(no P) This bill provides that any such information received about a pupil must be disclosed to the parent or guardian of that pupil upon the request of the parent or guardian.

Currently, the parent, guardian or person in place of a parent of a developmentally disabled minor has access at all times to the minor's court or treatment records for mental illness, developmental disability, alcoholism or drug dependence unless the minor is 14 or older and files a written objection to the access. Parents, guardians and persons in the place of parents of other minors have the same rights of access to the court and treatment records of the minors as do the minors themselves. This bill requires access by a parent, guardian or person in the place of a parent of *any* minor to the minor's court or treatment records at all times.

Currently, contents of patient health care records may be released only with the informed consent of the patient or of a person authorized by the patient or, without informed consent, to specified persons. A "person authorized by a patient" includes the parent, guardian or legal custodian of a minor patient. Thus, a parent of a minor patient may provide informed consent for release of the minor's patient health care records to himself or herself. A patient or other person may inspect and receive a copy of a patient's health care record by submitting a statement of informed consent. This bill clarifies that the informed consent for inspection and receipt of a patient's health care record may be that of the patient or of a person authorized by the patient.

Currently, only the parent or guardian of a minor under age 14 may have access, without the informed consent of the minor, to the results of a test for the presence of HIV (human immunodeficiency virus, the virus that causes AIDS). This bill permits the parent, guardian or person in the place of the parent of any minor to have access, without informed consent, to any results of the minor's test for the presence of HIV.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***



**BILL****SECTION 1**

1       **SECTION 1.** 48.396 (2) (ag) of the statutes is amended to read:

2       48.396 (2) (ag) Upon request of the parent, guardian or legal custodian of a  
3 child who is the subject of a record of a court specified in par. (a), ~~or upon request of~~  
4 ~~the child, if 14 years of age or over, the court shall open for inspection by the parent,~~  
5 ~~guardian, or legal custodian or child the records of the court relating to that child.~~  
6 Upon request of a child who is the subject of a record of a court specified in par. (a)  
7 and who is 14 years of age or over, the court shall open for inspection by the child the  
8 records of the court relating to that child, unless the court finds, after due notice and  
9 hearing, that inspection of those records by the parent, guardian, legal custodian or  
10 child would result in imminent danger to anyone.

11       **SECTION 2.** 48.396 (2) (aj) of the statutes is amended to read:

12       48.396 (2) (aj) Upon request of the parent, guardian or legal custodian of a child  
13 expectant mother of an unborn child who is the subject of a record of a court specified  
14 in par. (a), ~~upon request of an expectant mother of an unborn child who is the subject~~  
15 ~~of a record of a court specified in par. (a), if 14 years of age or over, or upon request~~  
16 ~~of an unborn child by the unborn child's guardian ad litem, the court shall open for~~  
17 ~~inspection by the parent, guardian, or legal custodian, expectant mother or unborn~~  
18 ~~child by the unborn child's guardian ad litem the records of the court relating to that~~  
19 ~~expectant mother. Upon request of an expectant mother of an unborn child who is~~  
20 ~~the subject of a record of a court specified in par. (a) and who is 14 years of age or over~~  
21 ~~or upon request of an unborn child by the unborn child's guardian ad litem, the court~~  
22 ~~shall open for inspection by the expectant mother or unborn child by the unborn~~  
23 ~~child's guardian ad litem the records of the court relating to that expectant mother,~~  
24 unless the court finds, after due notice and hearing, that inspection of those records

**BILL****SECTION 2**

1 by the parent, guardian, legal custodian, expectant mother or unborn child by the  
2 unborn child's guardian ad litem would result in imminent danger to anyone.

3 **SECTION 3.** 48.78 (2) (ag) of the statutes is amended to read:

4 48.78 (2) (ag) Paragraph (a) does not prohibit an agency from making available  
5 for inspection or disclosing the contents of a record, upon the request of the parent,  
6 guardian or legal custodian of the child who is the subject of the record or upon the  
7 request of the child, if 14 years of age or over, to the parent, guardian, legal custodian  
8 or child. Upon request of a parent, guardian or legal custodian of a child who is the  
9 subject of a record, an agency shall make available for inspection or disclose the  
10 contents of the record to the parent, guardian or legal custodian. Upon request of a  
11 child who is the subject of a record and who is 14 years of age or over, an agency may  
12 make available for inspection or disclose the contents of the record to the child, unless  
13 the agency determines that inspection of those records by the child, parent, guardian  
14 or legal custodian would result in imminent danger to anyone.

15 **SECTION 4.** 48.78 (2) (aj) of the statutes is amended to read:

16 48.78 (2) (aj) Paragraph (a) does not prohibit an agency from making available  
17 for inspection or disclosing the contents of a record, upon the request of a parent,  
18 guardian or legal custodian of a child expectant mother of an unborn child who is the  
19 subject of the record, upon the request of an expectant mother of an unborn child who  
20 is the subject of the record, if 14 years of age or over, or upon the request of an unborn  
21 child by the unborn child's guardian ad litem to the parent, guardian, legal  
22 custodian, expectant mother or unborn child by the unborn child's guardian ad litem.  
23 Upon request of a parent, guardian or legal custodian of a child expectant mother of  
24 an unborn child who is the subject of a record, an agency shall make available for  
25 inspection or disclose the contents of the record to the parent, guardian or legal

**BILL**

1 ~~custodian. Upon request of an expectant mother of an unborn child who is the subject~~  
2 ~~of a record and who is 14 years of age or over or upon request of an unborn child by~~  
3 ~~the unborn child's guardian ad litem, an agency may make available for inspection~~  
4 ~~or disclose the contents of the record to the expectant mother or unborn child by the~~  
5 ~~unborn child's guardian ad litem, unless the agency determines that inspection of~~  
6 ~~those records by the parent, guardian, legal custodian, expectant mother or unborn~~  
7 ~~child by the unborn child's guardian ad litem would result in imminent danger to~~  
8 ~~anyone.~~

9 **SECTION 5.** 51.30 (5) (b) 1. of the statutes is amended to read:

10 51.30 (5) (b) 1. The guardian of an individual who is adjudged incompetent  
11 under ch. 880 shall have access to the individual's court and treatment records at all  
12 times. The parent, guardian or person in the place of a parent of a developmentally  
13 disabled minor shall have access to the minor's court and treatment records at all  
14 times ~~except in the case of a minor aged 14 or older who files a written objection to~~  
15 ~~such access with the custodian of the records. The parent, guardian or person in the~~  
16 ~~place of a parent of other minors shall have the same rights of access as provided to~~  
17 ~~subject individuals under this section.~~

18 **SECTION 6.** 118.126 (1) (c) of the statutes is amended to read:

19 118.126 (1) (c) The information is required to be reported under sub. (3) or s.  
20 48.981.

21 **SECTION 7.** 118.126 (2) of the statutes is amended to read:

22 118.126 (2) A school psychologist, counselor, social worker or nurse, or any  
23 teacher or administrator designated by the school board who engages in alcohol or  
24 drug abuse program activities, who in good faith discloses or fails to disclose  
25 information under sub. (1) is immune from civil liability for such acts or omissions.

**BILL****SECTION 7**

1 This subsection does not apply to information required to be reported under sub. (3)  
2 or s. 48.981.

3 **SECTION 8.** 118.126 (3) of the statutes is created to read:

4 118.126 (3) Any information received about a pupil under sub. (1) shall be  
5 disclosed to the parent or guardian of that pupil upon the request of the parent or  
6 guardian.

7 **SECTION 9.** 146.83 (1) (intro.) of the statutes is amended to read:

8 146.83 (1) (intro.) Except as provided in s. 51.30 or 146.82 (2), any patient or  
9 other person may, upon submitting a statement of informed consent of the patient  
10 or a person authorized by the patient:

11 **SECTION 10.** 252.15 (5) (a) 15. of the statutes is amended to read:

12 252.15 (5) (a) 15. To anyone who provides consent for the testing under sub. (2)  
13 (a) 4. b. and, for any other minor, to the parent, guardian or person in the place of a  
14 parent of the minor, except that disclosure may be made under this subdivision only  
15 during a period in which the test subject is adjudicated incompetent under ch. 880,  
16 is under ~~14~~ 18 years of age or is unable to communicate due to a medical condition.

17 ~~**SECTION 11.** 938.396 (2) (ag) of the statutes is amended to read:~~

18 938.396 (2) (ag) Upon request of the parent, guardian or legal custodian of a  
19 juvenile who is the subject of a record of a court specified in par. (a), ~~or upon request~~  
20 ~~of the juvenile, if 14 years of age or over, the court shall open for inspection by the~~  
21 ~~parent, guardian, or legal custodian or juvenile the records of the court relating to~~  
22 ~~that juvenile. Upon request of a juvenile who is the subject of a record of a court~~  
23 ~~specified in par. (a) and who is 14 years of age or over, the court shall open for~~  
24 ~~inspection by the juvenile the records of the court relating to that juvenile, unless the~~  
25 ~~court finds, after due notice and hearing, that inspection of those records by the~~

**BILL**

1 ~~parent, guardian, legal custodian or juvenile would result in imminent danger to~~  
2 ~~anyone.~~

3 **SECTION 12.** 938.78 (2) (ag) of the statutes is amended to read:

4 938.78 (2) (ag) Paragraph (a) does not prohibit an agency from making  
5 available for inspection or disclosing the contents of a record, upon the request of the  
6 parent, guardian or legal custodian of the juvenile who is the subject of the record  
7 or upon the request of the juvenile, if 14 years of age or over, to the parent, guardian,  
8 legal custodian or juvenile. Upon request of a parent, guardian or legal custodian  
9 of a juvenile who is the subject of a record, an agency shall make available for  
10 inspection or disclose the contents of the record to the parent, guardian or legal  
11 custodian. Upon request of a juvenile who is the subject of a record and who is 14  
12 years of age or over, an agency may make available for inspection or disclose the  
13 contents of the record to the juvenile, unless the agency finds that inspection of those  
14 records by the juvenile, parent, guardian or legal custodian would result in imminent  
15 danger to anyone.

16 **SECTION 13. Initial applicability.**

17 (1) The treatment of section 118.126 (1) (c), (2) and (3) of the statutes first  
18 applies to information received under section 118.126 (1) of the statutes on the  
19 effective date of this subsection.

20 (END)

118.126

9/16/99

Rep. Jean Hund <sup>gt</sup> Permark:

For social services and school records,  
provide that agency or school shall disclose  
records to parent unless agency or school  
obtains a juvenile court order prohibiting disclosure,  
i.e., require juvenile court, not the agency or  
the school, to make the determination that  
disclosure would result in imminent danger.

GMM

## FISCAL ESTIMATE FORM

1999 Session

☒ ORIGINAL  
☐ CORRECTED☐ UPDATED  
☐ SUPPLEMENTAL

LRB # LRB-3553/3

Introduction #

Admin. Rule #

Subject Access by a parent to records relating to the parent's child

## Fiscal Effect Indeterminable

State: ☐ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation  
or affects a sum sufficient appropriation.☐ Increase Existing Appropriation  
☐ Decrease Existing Appropriation  
☐ Create New Appropriation☐ Increase Existing Revenues  
☐ Decrease Existing Revenues☐ Increase Costs - May be possible to Absorb  
Within Agency's Budget ☐ Yes ☐ No☐ Decrease CostsLocal: ☐ No local government costs Indeterminable1. ☐ Increase Costs  
☐ Permissive ☐  
Mandatory2. ☐ Decrease Costs  
☐ Permissive ☐  
Mandatory3. ☐ Increase Revenues  
☐ Permissive ☐ Mandatory4. ☐ Decrease Revenues  
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities☐ Counties ☐ Others \_\_\_\_\_☒ School Districts ☐ WTCS Districts

## Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐

SEG-S

## Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

This bill requires certain entities to release specified information to parents upon request. Among those entities are school district personnel designated by the school board who engage in alcohol or drug abuse program activities. The bill provides that any information received from a pupil that the pupil or another pupil is using or experiencing problems resulting from the use of alcohol or other drugs must be disclosed to the parent or legal guardian of that pupil upon request of the parent or legal guardian.

Because it is unknown how many parents or guardians will request the above information, any costs related to this provision in the bill to local school districts are indeterminable.


There is no state fiscal effect as a result of this bill.

## Long-Range Fiscal Implications:

Prepared By: (Name &amp; Phone # / Agency Name)

Tom Johnson (608) 266-2819  
Department of Public Instruction

Authorized Signature / Telephone No.

  
Gina Frank-Reece (608) 266-2804

Date

9-17-99

Pa. 9/17 AM

GMM,

LRB-3553/8

DAK&amp;PRG:cmh:jf

RM2

## 1999 ASSEMBLY BILL

- 1 AN ACT *to amend* 51.30 (5) (b) 1., 118.126 (1) (c), 118.126 (2), 146.83 (1) (intro.)  
2 and 252.15 (5) (a) 15.; and *to create* 118.126 (3) of the statutes; **relating to:**  
3 access by a parent to records relating to the parent's child.

Insert  
A-1

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*Analysis by the Legislative Reference Bureau*

Under current law, with certain exceptions, any school psychologist, counselor, social worker or nurse, and any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, must keep confidential information received from a pupil that the pupil or another pupil is using or experiencing problems resulting from the use of alcohol or other drugs. This bill provides that any such information received about a pupil must be disclosed to the parent or guardian of that pupil upon the request of the parent or guardian.

Currently, the parent, guardian or person in place of a parent of a developmentally disabled minor has access at all times to the minor's court or treatment records for mental illness, developmental disability, alcoholism or drug dependence unless the minor is 14 or older and files a written objection to the access. Parents, guardians and persons in the place of parents of other minors have the same rights of access to the court and treatment records of the minors as do the minors themselves. This bill requires access by a parent, guardian or person in the place of a parent of *any* minor to the minor's court or treatment records at all times.

Currently, contents of patient health care records may be released only with the informed consent of the patient or of a person authorized by the patient or, without informed consent, to specified persons. A "person authorized by a patient" includes

Insert  
A-2



**ASSEMBLY BILL**

the parent, guardian or legal custodian of a minor patient. Thus, a parent of a minor patient may provide informed consent for release of the minor's patient health care records to himself or herself. A patient or other person may inspect and receive a copy of a patient's health care record by submitting a statement of informed consent. This bill clarifies that the informed consent for inspection and receipt of a patient's health care record may be that of the patient or of a person authorized by the patient.

Currently, only the parent or guardian of a minor under age 14 may have access, without the informed consent of the minor, to the results of a test for the presence of HIV (human immunodeficiency virus, the virus that causes AIDS). This bill permits the parent, guardian or person in the place of the parent of any minor to have access, without informed consent, to any results of the minor's test for the presence of HIV.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

Insert  
2-1

1           **SECTION 1.** 51.30 (5) (b) 1. of the statutes is amended to read:

2           51.30 (5) (b) 1. The guardian of an individual who is adjudged incompetent  
3 under ch. 880 shall have access to the individual's court and treatment records at all  
4 times. The parent, guardian or person in the place of a parent of a developmentally  
5 disabled minor shall have access to the minor's court and treatment records at all  
6 times ~~except in the case of a minor aged 14 or older who files a written objection to~~  
7 ~~such access with the custodian of the records. The parent, guardian or person in the~~  
8 ~~place of a parent of other minors shall have the same rights of access as provided to~~  
9 ~~subject individuals under this section.~~

10           **SECTION 2.** 118.126 (1) (c) of the statutes is amended to read:

11           118.126 (1) (c) The information is required to be reported under sub. (3) or s.  
12 48.981.

13           **SECTION 3.** 118.126 (2) of the statutes is amended to read:

**ASSEMBLY BILL**

1           118.126 (2) A school psychologist, counselor, social worker or nurse, or any  
2 teacher or administrator designated by the school board who engages in alcohol or  
3 drug abuse program activities, who in good faith discloses or fails to disclose  
4 information under sub. (1) is immune from civil liability for such acts or omissions.  
5 This subsection does not apply to information required to be reported under sub. (3)  
6 or s. 48.981.

7           **SECTION 4.** 118.126 (3) of the statutes is created to read:

8           118.126 (3) Any information<sup>✓</sup> received about a pupil under sub. (1) shall be  
9 disclosed to the parent or guardian of that pupil upon the request of the parent or  
10 guardian. Insert 3-10

11           **SECTION 5.** 146.83 (1) (intro.) of the statutes is amended to read:

12           146.83 (1) (intro.) Except as provided in s. 51.30 or 146.82 (2), any patient or  
13 other person may, upon submitting a statement of informed consent of the patient  
14 or a person authorized by the patient:

15           **SECTION 6.** 252.15 (5) (a) 15. of the statutes is amended to read:

16           252.15 (5) (a) 15. To anyone who provides consent for the testing under sub. (2)  
17 (a) 4. b. and, for any other minor, to the parent, guardian or person in the place of a  
18 parent of the minor, except that disclosure may be made under this subdivision only  
19 during a period in which the test subject is adjudicated incompetent under ch. 880,  
20 is under 14 18 years of age or is unable to communicate due to a medical condition.

21           **SECTION 7. Initial applicability.**

22           (1) The treatment of section 118.126 (1) (c), (2) and (3) of the statutes first  
23 applies to information received under section 118.126 (1) of the statutes on the  
24 effective date of this subsection.

25           **(END)**

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(plain)

Under current law, a social services agency, for example, the department of health and family services, the department of corrections or a county department of human services or social services, may not make available for inspection or disclose the contents of any record kept or information received about a child in its care or legal custody, except under certain exceptions. One of those exceptions *permits* a social services agency to make available for inspection or to disclose the contents of a record concerning a child to the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian, unless the social services agency determines that inspection of the record by the parent, guardian or legal custodian would result in imminent danger to anyone. This bill *requires* a social services agency to make available for inspection or to disclose the contents of a record concerning a child to the parent, guardian or legal custodian of the child on the request of the parent, guardian or legal custodian, unless the agency petitions the court assigned to exercise jurisdiction under the children's code and the juvenile justice code (juvenile court) for an order prohibiting the agency from making available for inspection or disclosing the contents of the record to the parent, guardian or legal custodian and the juvenile court, after a hearing and an inspection of the record, determines that inspection of the record by the parent, guardian or legal custodian would result in imminent danger to anyone.

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no 91  
He  
✓  
, unless the school board petitions the juvenile court for an order prohibiting the disclosure of that information and the juvenile court, after a hearing and an inspection of the information, determines that disclosure of the information to the parent or guardian would result in imminent danger to anyone

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**(INSERT 2-1)**

**SECTION 1.** 48.78 (2) (ag) of the statutes is amended to read:

48.78 (2) (ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian or legal custodian of the child who is the subject of the record or upon the request of the child, if 14 years of age or over, to the parent, guardian, legal custodian or child. Upon request of a parent, guardian or legal custodian of a child who is the subject of a record, an agency shall make available for inspection or disclose the contents of the record to the parent, guardian or legal custodian, unless the agency petitions the court for an order prohibiting the agency from making available for inspection or disclosing the contents of the record to the parent, guardian or legal custodian and the court, after a hearing and an inspection of the record, determines that inspection of the record by the parent, guardian or legal custodian would result in imminent danger to anyone. Upon request of a child who is the subject of a record and who is 14 years of age or over, an agency may make available for inspection or disclose the contents of the record to the child, unless the agency determines that inspection of these records the record by the child, parent, guardian or legal custodian would result in imminent danger to anyone.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7; 1985 a. 29 s. 3202 (23); 1985 a. 176, 292, 332; 1987 a. 332; 1989 a. 31, 107, 336; 1991 a. 17, 39; 1993 a. 16, 92, 95, 218, 227, 377, 385, 395, 479, 491; 1995 a. 27 ss. 2610 to 2614p, 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283, 292.

**SECTION 2.** 48.78 (2) (aj) of the statutes is amended to read:

48.78 (2) (aj) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of a parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of the record, upon the request of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, or upon the request of an unborn

child by the unborn child's guardian ad litem to the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem. Upon request of a parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record, an agency shall make available for inspection or disclose the contents of the record to the parent, guardian or legal custodian, unless the agency petitions the court for an order prohibiting the agency from making available for inspection or disclosing the contents of the record to the parent, guardian or legal custodian and the court, after a hearing and an inspection of the record, determines that inspection of the record by the parent, guardian or legal custodian would result in imminent danger to anyone. Upon request of an expectant mother of an unborn child who is the subject of a record and who is 14 years of age or over or upon request of an unborn child by the unborn child's guardian ad litem, an agency may make available for inspection or disclose the contents of the record to the expectant mother or unborn child by the unborn child's guardian ad litem, unless the agency determines that inspection of those records by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

**History:** 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7; 1985 a. 29 s. 3202 (23); 1985 a. 176, 292, 332; 1987 a. 332; 1989 a. 31, 107, 336; 1991 a. 17, 39; 1993 a. 16, 92, 95, 218, 227, 377, 385, 395, 479, 491; 1995 a. 27 ss. 2610 to 2614p, 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283, 292.

(END OF INSERT)

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*may*

, unless the school board petitions the court assigned to exercise jurisdiction under chs. 48 and 938 for an order prohibiting disclosure of the information and the court, after a hearing and an inspection of the information, determines that disclosure of the information<sup>✓</sup> to the parent or guardian would result in imminent danger to anyone

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(INSERT 3-20)

**SECTION 1.** 938.78 (2) (ag) of the statutes is amended to read:

938.78 (2) (ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian or legal custodian of the juvenile who is the subject of the record or upon the request of the juvenile, if 14 years of age or over, to the parent, guardian, legal custodian or juvenile. Upon request of a parent, guardian or legal custodian of a juvenile who is the subject of a record, an agency shall make available for inspection or disclose the contents of the record to the parent, guardian or legal custodian, unless the agency petitions the court for an order prohibiting the agency from making available for inspection or disclosing the contents of the record to the parent, guardian or legal custodian and the court, after a hearing and an inspection of the record, determines that inspection of the record by the parent, guardian or legal custodian would result in imminent danger to anyone. Upon request of a juvenile who is the subject of a record and who is 14 years of age or over, an agency may make available for inspection or disclose the contents of the record to the juvenile, unless the agency finds that inspection of these records the record by the juvenile, parent, guardian or legal custodian would result in imminent danger to anyone.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283.

(END OF INSERT)




Mike/Landon

Jacket - 3SS3/4

for Hundtermark

GMM



(Jason)